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international conduct has been advanced by the signing and ratification by the Senate of treaties of arbitration between the United States, England, France, Spain, Portugal, Norway, Switzerland, Italy, and Mexico. In our own country also during the past year has assembled a conference in congress of the representatives of all five of the Central American states, who have agreed, after long and temperate and kindly discussion, upon a series of conventions, all of which have been ratified by their respective countries in the design to promote the reasonable solution of difficulties in that long much-distracted part of the earth, having at the fore the establishment of a judicial tribunal for the settlement of all questions that arise between the five Central American nations, a tribunal in which shall sit a court of five prominent judges, having no other business than the judicial work of the tribunal.

Our Society has given evidence of the widespread interest felt in the United States in the subject of international law. Beginning with a very few members, during the short period of its existence it has, without much advertising, naturally expanded until there are now on the rolls over nine hundred members.

In accordance with the custom which Dr. Scott has imposed upon the Society, the President is expected to make some remarks at the opening of each annual meeting of the Society upon some subject connected with international law, and without availing myself of the opportunity which I have to occupy the entire time of the annual meeting, I shall discharge that duty by making a few very brief observations on the subject of "The sanction of international law."

ADDRESS OF THE PRESIDENT OF THE SOCIETY, MR. ELIHU ROOT,
OF WASHINGTON, D. C.

One accustomed to the administration of municipal law who turns his attention for the first time to the discussion of practical questions arising between nations and dependent upon the rules of international law, must be struck by a difference between the two systems which materially affects the intellectual processes involved in every discussion, and which is apparently fundamental.

The proofs and arguments adduced by the municipal lawyer are addressed to the object of setting in motion certain legal machinery which will result in a judicial judgment to be enforced by the entire power of the state over litigants subject to its jurisdiction and control. Before him lies a clear, certain, definite conclusion of the controversy, and for the finality and effectiveness of that conclusion the sheriff and the policeman stand always as guarantors in the last resort.

When the international lawyer, on the other hand, passes from that academic discussion in which he has no one to convince but himself, and proceeds to seek the establishment of rights or the redress of wrongs in a concrete case, he has apparently no objective point to which he can address his proofs or arguments, except the conscience and sense of justice of the opposing party to the controversy. In only rare, exceptional and peculiar cases, do the conclusions of the international lawyer, however, clearly demonstrated, have behind them the compulsory effect of possible war. In the vast majority of practical questions arising under the rules of international law there does not appear on the surface to be any reason why either party should abandon its own contention or yield against its own interest to the arguments of the other side. The action of each party in yielding or refusing to yield to the arguments of the other appears to be entirely dependent upon its own will and pleasure. This apparent absence of sanction for the enforcement of the rules of international law has led great authority to deny that those rules are entitled to be called law at all; and this apparent hopelessness of finality carries to the mind which limits its consideration to the procedure in each particular case, a certain sense of futility of argument.

Nevertheless, all the foreign offices of the civilized world are continually discussing with each other questions of international law, both public and private, cheerfully and hopefully marshaling facts furnishing evidence presenting arguments and building up records, designed to show that the rules of international law require such and such things to be done or such and such things to be left undone. And in countless cases nations are yielding to such arguments and shaping their conduct against their own apparent interests in the

particular cases under discussion, in obedience to the rules which are shown to be applicable.

Why is it that nations are thus continually yielding to arguments with no apparent compulsion behind them, and before the force of such arguments abandoning purposes, modifying conduct, and giving redress for injuries? A careful consideration of this question seems to lead to the conclusion that the difference between municipal and international law, in respect of the existence of forces compelling obedience, is more apparent than real, and that there are sanctions for the enforcement of international law no less real and substantial than those which secure obedience to municipal law.

It is a mistake to assume that the sanction which secures obedience to the laws of the state consists exclusively or chiefly of the pains and penalties imposed by the law itself for its violation. It is only in exceptional cases that men refrain from crime through fear of fine or imprisonment. In the vast majority of cases men refrain from criminal conduct because they are unwilling to incur in the community in which they live the public condemnation and obloquy which would follow a repudiation of the standard of conduct prescribed by that community for its members. As a rule, when the law is broken the disgrace which follows conviction and punishment is more terrible than the actual physical effect of imprisonment or deprivation of property. Where it happens that the law and public opinion point different ways, the latter is invariably the stronger. I have seen a lad grown up among New York toughs break down and weep because sent to a reformatory instead of being sentenced to a State's prison for a violation of law. The reformatory meant comparative ease, comfort, and opportunity for speedy return to entire freedom; the State's prison would have meant hard labor and long and severe confinement. Yet in his community of habitual criminals a term in State's prison was a proof of manhood and a title to distinction, while consignment to a reformatory was the treatment suited to immature boyhood. He preferred the punishment of manhood with what he deemed honor to the opportunity of youth with what he deemed disgrace. Not only is the effectiveness of the punishments denounced by law against crime derived chiefly from the

public opinion which accompanies them, but those punishments themselves are but one form of the expression of public opinion. Laws are capable of enforcement only so far as they are in agreement with the opinions of the community in which they are to be enforced. As opinion changes old laws become obsolete and new standards force their way into the statute books. Laws passed, as they sometimes are, in advance of public opinion ordinarily wait for their enforcement until the progress of opinion has reached recognition of their value. The force of law is in the public opinion which prescribes it.

The impulse of conformity to the standard of the community and the dread of its condemnation are reinforced by the practical considerations which determine success or failure in life. Conformity to the standard of business integrity which obtains in the community is necessary to business success. It is this consideration far more frequently than the thought of the sheriff with a writ of execution that leads men to pay their debts and to keep their contracts. Social esteem and standing, power and high place in the professions, in public office, in all associated enterprise, depend upon conformity to the standards of conduct in the community. Loss of these is the most terrible penalty society can inflict. It is only for the occasional nonconformist that the sheriff and policeman are kept in reserve; and it is only because the nonconformists are occasional and comparatively few in number that the sheriff and the policeman can have any effect at all. For the great mass of mankind laws established by civil society are enforced directly by the power of public opinion, having, as the sanction for its judgments, the denial of nearly everything for which men strive in life.

The rules of international law are enforced by the same kind of sanction, less certain and peremptory, but continually increasing in effectiveness of control. "A decent respect to the opinions of mankind" did not begin or end among nations with the American Declaration of Independence; but it is interesting that the first public national act in the New World should be an appeal to that universal international public opinion, the power and effectiveness of which the New World has done so much to promote.

In former times, each isolated nation, satisfied with its own opin-

ion of itself and indifferent to the opinion of others, separated from all others by mutual ignorance and misjudgment, regarded only the physical power of other nations. Gibbon could say of the Byzantine Empire: "Alone in the universe, the self-satisfied pride of the Greeks was not disturbed by the comparison of foreign merit; and it is no wonder if they fainted in the race, since they had neither competitors to urge their speed nor judges to crown their victory." Now, however, there may be seen plainly the effects of a long-continued process which is breaking down the isolation of nations, permeating every country with better knowledge and understanding of every other country, spreading throughout the world a knowledge of each government's conduct to serve as a basis for criticism and judgment, and gradually creating a community of nations, in which standards of conduct are being established, and a world-wide public opinion is holding nations to conformity or condemning them for disregard of the established standards. The improved facilities for travel and transportation, the enormous increase of production and commerce, the revival of colonization and the growth of colonies on a gigantic scale, the severance of the laborer from the soil, accomplished by cheap steamship and railway transportation and the emigration agent, the flow and return of millions of emigrants across national lines, the amazing development of telegraphy and of the press, conveying and spreading instant information of every interesting event that happens in regions however remote — all have played their part in this change.

Pari passu with the breaking down of isolation, that makes a common public opinion possible, the building up of standards of conduct is being accomplished by the formulation and establishment of rules that are being gradually taken out of the domain of discussion into that of general acceptance — a process in which the recent conferences at The Hague have played a great and honorable part. There is no civilized country now which is not sensitive to this general opinion, none that is willing to subject itself to the discredit of standing brutally on its power to deny to other countries the benefit of recognized rules of right conduct. The deference shown to this international public opinion is in due proportion to a nation's great-

ness and advance in civilization. The nearest approach to defiance will be found among the most isolated and least civilized of countries, whose ignorance of the world prevents the effect of the world's opinion; and in every such country internal disorder, oppression, poverty, and wretchedness mark the penalties which warn mankind that the laws established by civilization for the guidance of national conduct can not be ignored with impunity.

National regard for international opinion is not caused by *amour propre* alone — not merely by desire for the approval and good opinion of mankind. Underlying the desire for approval and the aversion to general condemnation with nations as with the individual, there is a deep sense of interest, based partly upon the knowledge that mankind backs its opinions by its conduct and that nonconformity to the standard of nations means condemnation and isolation, and partly upon the knowledge that in the give and take of international affairs it is better for every nation to secure the protection of the law by complying with it than to forfeit the law's benefits by ignoring it.

Beyond all this there is a consciousness that in the most important affairs of nations, in their political status, the success of their undertakings and their processes of development, there is an indefinite and almost mysterious influence exercised by the general opinion of the world regarding the nation's character and conduct. The greatest and strongest governments recognize this influence and act with reference to it. They dread the moral isolation created by general adverse opinion and the unfriendly feeling that accompanies it, and they desire general approval and the kindly feeling that goes with it.

This is quite independent of any calculation upon a physical enforcement of the opinion of others. It is difficult to say just why such opinion is of importance, because it is always difficult to analyze the action of moral forces; but it remains true and is universally recognized that the nation which has with it the moral force of the world's approval is strong, and the nation which rests under the world's condemnation is weak, however great its material power.

These are the considerations which determine the course of national conduct regarding the vast majority of questions to which are to be applied the rules of international law. The real sanction which

enforces those rules is the injury which inevitably follows nonconformity to public opinion; while, for the occasional and violent or persistent lawbreaker, there always stands behind discussion the ultimate possibility of war, as the sheriff and the policeman await the occasional and comparatively rare violators of municipal law.

Of course, the force of public opinion can be brought to bear only upon comparatively simple questions and clearly ascertained and understood rights. Upon complicated or doubtful questions, as to which judgment is difficult, each party to the controversy can maintain its position of refusing to yield to the other's arguments without incurring public condemnation. Upon this class of questions the growth of arbitration furnishes a new and additional opportunity for opinion to act; because, however complicated the question in dispute may be, the proposition that it should be submitted to an impartial tribunal is exceedingly simple, and the proposition that the award of such a tribunal shall be complied with is equally simple, and the nation which refuses to submit a question properly the subject of arbitration naturally invites condemnation.

Manifestly, this power of international public opinion is exercised not so much by governments as by the people of each country whose opinions are interpreted in the press and determine the country's attitude towards the nation whose conduct is under consideration. International opinion is the consensus of individual opinion in the nations. The most certain way to promote obedience to the law of nations and to substitute the power of opinion for the power of armies and navies is, on the one hand, to foster that "decent respect to the opinions of mankind" which found place in the great Declaration of 1776, and, on the other hand, to spread among the people of every country a just appreciation of international rights and duties and a knowledge of the principles and rules of international law to which national conduct ought to conform; so that the general opinion, whose approval or condemnation supplies the sanction for the law, may be sound and just and worthy of respect.

Mr. Root. The first thing to be done by the Society is a matter of business before the general discussion. A motion for the appoint-

ment of a committee to nominate officers for the ensuing year will be in order.

Mr. GEORGE W. KIRCHWEY. Mr. President, I move that such a committee be appointed, consisting of five members, as provided in the Constitution.

The motion was agreed to, and the President appointed as such committee Mr. G. W. Scott, Mr. S. J. Barrows, Mr. Kirchwey, Mr. Wilson, and Mr. Lansing.

Mr. CHARLES N. GREGORY. Mr. President, I move that the Committee on Nominations be requested to report at the end of this morning's session.

Mr. ROOT. The committee will regard itself as instructed to report at the end of the morning session. Before proceeding to the discussion, I will advise members of the Society that the President of the United States will receive members at the White House at half-past two o'clock precisely, and that for the purpose of identification members should provide themselves with cards, which can be obtained in the little red room at the side of the F street entrance of the hotel, just at the top of the stairs.

If there is no other business, we will proceed with the discussion upon the topic "Should the violation of treaties be made a Federal offense?" The Chair will recognize Hon. George Turner.

ADDRESS OF MR. GEORGE TURNER,
OF SPOKANE, WASHINGTON.

Mr. President, and Ladies and Gentlemen: The right and power of the Federal Government to make violations of its treaties by its own citizens penal offenses has never been made the subject of determination by the courts, so far as I am informed. I do not know that the power has ever been questioned, but the fact that it has never been exercised, and that there is a dearth of judicial authority on the subject, makes it proper to state with some fullness the grounds upon which it is believed the power can be sustained.

The Government of the United States is a Federal Government, and, for domestic purposes, the subjects of sovereignty are divided